

MONTANA LEGISLATIVE HISTORY

Chapter 312 19 91

Bill H 421 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Feb 19 ✓ C

Feb 19 ✓ C

_____ C

_____ C

Date Out Feb 21 ✓ C

S. Committee on Judiciary

Hearing Date(s) Mar 19 ✓ C

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

1 HOUSE BILL NO. 421
2 INTRODUCED BY Huffman
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE
5 CERTIFICATION AND TRAINING REQUIREMENTS FOR JUDGES OF COURTS
6 OF LIMITED JURISDICTION; CLARIFYING THE QUALIFICATIONS FOR
7 OFFICE OF JUDGES OF COURTS OF LIMITED JURISDICTION;
8 REQUIRING THAT THE SUPREME COURT BE NOTIFIED OF THE ELECTION
9 OR APPOINTMENT OF A JUDGE OF A COURT OF LIMITED
10 JURISDICTION; AMENDING SECTIONS 3-1-1502, 3-1-1503, 3-6-202,
11 3-10-202, 3-10-231, AND 13-15-405, MCA; AND PROVIDING AN
12 IMMEDIATE EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 3-1-1502, MCA, is amended to read:

16 "3-1-1502. Training and certification of judges. Except
17 as provided in 3-1-1503, no judge selected for a term of
18 office commencing--on--or--after--January-67--1986, may assume
19 the functions of his office unless he has filed with the
20 county clerk and recorder in his jurisdiction a certificate
21 of completion of a course of education and training
22 prescribed by the commission."

23 **Section 2.** Section 3-1-1503, MCA, is amended to read:

24 "3-1-1503. Exception -- temporary certificate. (1)
25 Section 3-1-1502 does not apply to a judge who has received

1 a temporary certificate issued by the commission as provided
2 for in subsection (2).

3 (2) The commission may issue a temporary certificate
4 enabling a judge to assume the functions of his office
5 pending completion of a course as required by 3-1-1502. The
6 temporary certificate must be in a form and subject to the
7 terms and conditions prescribed by the commission.

8 (3) The commission may issue a temporary certificate
9 only if:

10 (a) the judge is appointed or elected ~~for--his--first~~
11 term after the course is offered; or

12 (b) the commission grants an excuse because of a
13 personal illness, a death in the family, or other good
14 cause.

15 (4) The appointing authority for an appointed judge
16 shall notify the commission of the person appointed, and the
17 person appointed must be certified as provided in 3-1-1502
18 or this section prior to assuming office."

19 **Section 3.** Section 3-6-202, MCA, is amended to read:

20 "3-6-202. Qualifications -- certification -- training.

21 (1) A municipal court judge must have the same
22 qualifications as a judge of a district court, as set forth
23 in Article VII, section 9, of the 1972 Montana constitution,
24 except that a municipal court judge need only be admitted to
25 the practice of law in Montana for at least 2 years prior to

the date of appointment or election.

(2) A municipal court judge must be a resident and voter in the city in which he is elected at the time of his election.

(3) A municipal court judge must be certified as provided in 3-1-1502 or 3-1-1503 prior to assuming office.

(4) There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed municipal court judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided for in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed municipal court judge for attending the sessions by the city in which he holds or will hold court and must be charged against that city.

(5) Each municipal court judge shall attend the training sessions provided for in subsection (4). Failure to attend disqualifies a judge from office and creates a vacancy in the office. However, the supreme court may excuse a municipal court judge from attendance because of illness, a death in the family, or any other good cause."

Section 4. Section 3-10-202, MCA, is amended to read:

"3-10-202. Oath -- qualifications proof of

certification. (1) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, take the constitutional oath of office, which must be filed with the county clerk.

(2) Before the county clerk may file the oath, the elected or appointed justice must satisfy the clerk that he is either:

(a) ~~an attorney at law authorized to practice law in the state of Montana;~~

(b) ~~a person who has held the office of justice of the peace within the preceding 5 years; or~~

(c) ~~a person who has completed the orientation course of study held under the direction of the supreme court or has been excused by the supreme court~~ certified as provided in 3-1-1502 or 3-1-1503. If a person is appointed after the course is offered, he must agree to take the course at the next offering and failure to do so will disqualify him."

Section 5. Section 3-10-231, MCA, is amended to read:

"3-10-231. Circumstances in which an acting justice called in -- by whom. (1) Whenever a justice of the peace is disqualified from acting in any action because of the application of the supreme court's rules on disqualification and substitution of judges, subdivision 1, 2, or 3, he shall either transfer the action to another justice's court in the

1 same county or call a justice from a neighboring county to
2 preside in his behalf.

3 (2) Within 30 days of taking office, a justice of the
4 peace shall provide a list of persons who are qualified to
5 hold court in his place during a temporary absence when no
6 other justice or city judge is available. The persons listed
7 must be of good moral character and have community support,
8 a sense of community standards, and a basic knowledge of
9 court procedure. The county commissioners shall administer
10 the oath of office to each person on this list ~~within the~~
11 ~~ensuing 30 days or~~ as soon thereafter as possible after the
12 person has received a waiver of training from the supreme
13 court.

14 (3) Whenever a justice is sick, disabled, or absent,
15 the justice may call in another justice, if there is one
16 readily available, or a city judge or a person from the list
17 provided for in subsection (2) to hold court for the absent
18 judge until his return. If the justice is unable to call in
19 a substitute, the county commissioners shall call in another
20 justice, a city judge, or a person from the list provided
21 for in subsection (2).

22 (4) During the time when a justice of the peace is on
23 vacation or attending a training session, another justice of
24 the peace of the same county shall be authorized to handle
25 matters that otherwise would be handled by the absent

1 justice. When there is no other justice of the peace in the
2 county, the justice of the peace may designate another
3 person in the same manner as if the justice were sick or
4 absent.

5 (5) A justice of the peace of any county may hold the
6 court of any other justice of the peace at his request."

7 **Section 6.** Section 13-15-405, MCA, is amended to read:

8 "13-15-405. Declaration or certification of results.

9 (1) The board shall declare nominated or elected the
10 individuals having the highest number of votes cast for each
11 county and precinct office, except as provided in 13-10-204.

12 (2) The board shall proclaim the adoption or rejection
13 of a county ballot issue.

14 (3) The board shall certify the results of the canvass
15 of votes cast for individuals for political subdivision
16 offices and for and against political subdivision ballot
17 issues to the governing body of each political subdivision
18 participating in the election.

19 (4) If there is a tie vote for a county office, an
20 office of a political subdivision wholly within the county,
21 a precinct office, or a ballot issue voted on only in that
22 county or portion of that county, the board shall certify
23 the vote to the election administrator.

24 (5) The board shall certify the results of the canvass
25 of votes cast for justice of the peace, city judge, and

LC 1630/01

1 municipal court judge to the supreme court in order to
2 ensure compliance with 3-1-1502 or 3-1-1503."

3 NEW SECTION. Section 7. Effective date. [This act] is
4 effective on passage and approval.

-End-

HOUSE FINAL STATUS

HB 422

CHAPTER NUMBER 494

EFFECTIVE DATE: 4/20/91

HB 420 INTRODUCED BY J. RICE

COMPELLED TESTIMONY IMMUNITY IN COMMISSIONER
OF INSURANCE PROCEEDINGS

1/28	INTRODUCED		
1/28	REFERRED TO JUDICIARY		
1/29	FIRST READING		
2/14	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED		
2/16	2ND READING PASSED	94	0
2/19	3RD READING PASSED	100	0
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/14	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	49	0
3/18	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/23	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 246		

EFFECTIVE DATE: 10/01/91

HB 421 INTRODUCED BY HOFFMAN

CLARIFY CERTIFICATION AND TRAINING OF LIMITED JURISDICTION JUDGES

1/28	INTRODUCED		
1/28	REFERRED TO JUDICIARY		
1/29	FIRST READING		
2/13	HEARING		
2/25	COMMITTEE REPORT—BILL PASSED		
2/26	2ND READING PASSED	98	0
2/27	3RD READING PASSED	100	0
	TRANSMITTED TO SENATE		
2/27	REFERRED TO JUDICIARY		
3/04	FIRST READING		
3/19	HEARING		
3/19	COMMITTEE REPORT—BILL CONCURRED		
3/20	2ND READING CONCURRED	48	0
3/21	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/27	SIGNED BY PRESIDENT		
3/27	SIGNED BY SPEAKER		
3/28	TRANSMITTED TO GOVERNOR		
4/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 317		

EFFECTIVE DATE: 4/02/91

HB 422 INTRODUCED BY HOFFMAN

AUTHORIZE STATE TAX APPEAL BOARD TO USE HEARINGS OFFICERS
BY REQUEST OF DEPARTMENT OF ADMINISTRATION
AND STATE TAX APPEAL BOARD

1/28	INTRODUCED
1/28	REFERRED TO TAXATION
1/29	FIRST READING
1/29	FISCAL NOTE REQUESTED
2/04	FISCAL NOTE RECEIVED
2/04	FISCAL NOTE PRINTED

message that we will not tolerate the abuse and assault on the children of our state and they will not be forgotten. If this legislative body will not protect them, who will? I urge do pass of this bill.

HEARING ON HB 421

CLARIFY CERTIFICATION AND TRAINING OF LIMITED JURISDICTION JUDGES

Presentation and Opening Statement by Sponsor:

REP. HOFFMAN, HOUSE DISTRICT 74, stated HB 421 gives clarification requested by the Supreme Court to clarify existing law. Primarily what it does is clarify certain requirements of lower court judges. Judges in courts with limited jurisdiction, both JP courts and Municipal courts. It clarifies the qualifications of those judges and also requires that the Supreme Court be notified of an election or appointing of a judge to a court of limited jurisdiction. The bill cross references clarification with the qualification requirements between the district court judge statutes and the justice of the peace statutes in hopes of the courts appoint a judge that is properly trained. There is no fiscal impact to this bill.

Proponents' Testimony:

David Hull, Helena City Attorney, stated the bill makes clarifications in current law. I would point out on page two, section four, it talks about notifying the commission of the person appointed. There is some additional language on page 6 and 7 regarding certification of the election of a judge to the state courts. There reason for that is that we found judges were getting elected or appointed and we didn't know about it and didn't have them on our list and were unable to make sure they meant certification requirements. The other language changes in the body of the bill, clarifies the rules that the Supreme Court has already put in affect and given us guide lines to insure the certification and training of the courts of limited jurisdiction. I would ask for your support of this bill.

Pat Bradley, Montana Magistrates Association, stated the MMA supports HB 421. The President of the Magistrates Association is also a member of the commission on courts of limited jurisdiction, was hoping to be here to testify. In his absence, he asked me to tell you that the commission has requested that the code commissioner review the statutes in this bill for clarification. We ask that you support this bill.

Opponents' Testimony:none

Questions From Committee Members:

REP. MEASURE asked Mr. Hull, as far as the mandatory training requirements, where did they come from, how thoroughly did you

research the judicial court and the constitution to determine whether or not you can ask to require these people to attend? Mr. Hull said there is a statute that requires training certification for courts of limited jurisdiction judges. The Supreme Court has set up, as part of their overseeing of all judges, a training program that we have administered for 5 years. There is now in place a training program of two meetings every year, certification school every four years, which would test them and make sure they meet minimum qualifications to be a judges. What we have done in affect is codify the rules that we have already been following in training.

REP. MEASURE stated that the Supreme Court has jurisdiction over all the lower courts and they promulgate these rules. What is the purpose of codifying it statutorily? Mr. Hull said since there was a statute that said the court had to have training we need to clarify the amount of the training as well as the obligation of the city or county to provide the funds for that training. REP. MEASURE asked Mr. Hull if they have asked the Supreme Court about their feeling about you stepping into their area? Mr. Hull said yes, there is no problem. We have done this as an arm to the Supreme Court.

REP. BROWN asked Mr. Hull if he could explain page 4, line 9-10. What is the implication of striking that language? Mr. Hull said this makes no substantial changes. The statute provides for the requirements for judges to be lawyers in certain classes of jurisdictions. This is some redundant language that we felt wasn't appropriate here and we removed it. REP. BROWN asked why shouldn't the requirement be that all of these judges be lawyers? Mr. Hull said there is a statute that sets forth in circumstances they do require them to be lawyers. The commission's position is after legislative decision, we would certainly leave that up to the legislature. To my understanding there is a large body of support for lay judges in courts of limited jurisdiction level.

REP. BROWN asked Mr. Hull what is the reasoning for having lay judges? Mr. Hull said the theory of courts of limited jurisdiction that these are in effect people's courts. The lay persons are equally confident with sufficient training to handle the types of cases that are presented in those courts.

Closing by Sponsor:

REP. HOFFMAN, stated he would like to thank the committee for its consideration and ask for a do pass of this bill.

HEARING ON HB 554 REVISE INDIGENT COURT FILING

Presentation and Opening Statement by Sponsor:

REP. BENEDICT, HOUSE DISTRICT 64, stated this is a simple bill

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-13-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI			/
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

4,5,6,7 on page 5 and all of subsection 8 and renumber subsection 9. Motion carried.

Motion/Vote: REP. JOHNSON MOVED HB 567 DO PASS AS AMENDED.
Motion carried 19 to 1 with Rep. Brown voting no.

EXECUTIVE ACTION ON HB 421

Motion: REP. BROOKE MOVED HB 421 DO PASS.

Discussion: REP. MEASURE said this bill should have some legislation that addresses Justice of the Peace and City Courts.

Vote: Motion carried 18 to 2 with Rep's: Toole and Whalen voting no.

EXECUTIVE ACTION ON HB 559

Motion: REP. BROOKE MOVED HB 559 DO PASS.

Discussion: REP. MEASURE stated this bill addresses two areas. One is the area of change of presumption of the law for DUI to an inference. Presumption means you have to, as a defendant, overcome that presumption in order to overcome the state's case. That is already in the law and case law. Then the bill mentions airplanes and boats and some licensing while under the influence of drugs. Some of these drugs have residual effects that last for months. The second thing is you are forcing a person to do is take a blood test as opposed to the breathalyzer. You are spending the county's money to do this and who knows what results you are going to get.

Motion: REP. MEASURE moved to amend HB 559 by totally deleting all the language having to do with drug testing in this bill. "So the bill only brings the DUI statutes into compliance with what we presently have reviewed by the Supreme Court."

Discussion: REP. WHALEN stated he felt that the committee needs to realize the Supreme Court has already thrown the fifth amendment out the window when it comes to these types of statutes. With that in mind, he emphasized that the committee needs to keep this bill as narrow as possible.

REP. CLARK stated this would take away the ability of the state to determine if the person is actually under the influence of drugs.

REP. BROWN said that what the bill is trying to do is set up a new system for determining if someone is under the influence.

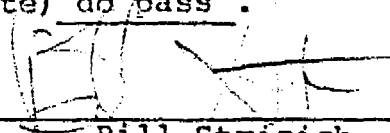
REP. CLARK said this amendment takes a tool away from the law enforcement to find out what drug they are on.

HOUSE STANDING COMMITTEE REPORT

February 25, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 421 (first reading copy -- white) do pass.

Signed: 
Bill Strizich, Chairman

commented that the Committee needs to address procedures on handling civil bids, and the confidentiality section of the bill. He said he believes HB 159 is a good and necessary bill, and that he hoped it would be closely examined in Executive Session.

EXECUTIVE ACTION ON HOUSE BILL 419

Amendments, Discussion and Votes:

Senator Mazurek made a motion to strike the inserted language on page 1, lines 24-25, so payments won't have to be made by certified mail. The motion carried unanimously.

Motion:

Senator Towe made a motion that HB 419 BE CONCURRED IN AS AMENDED.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously. Senator Pinsoneault was asked to carry the bill.

HEARING ON HOUSE BILL 421

Presentation and Opening Statement by Sponsor:

Representative David Hoffman, District 74, said he is presenting the bill, at the request of the Supreme Court Commission on Courts of Limited Jurisdiction, to clarify certification and training requirements for judges of those courts. He stated that the bill would allow that certification requirements of the justices of the peace and municipal court judges be taken care of in the same manner. Representative Hoffman told the Committee that the bill changes existing statutes to ensure that these certification requirements are transferred to municipal court judge statutes and vice versa.

Proponents' Testimony:

Patricia Bradley, Montana Magistrate's Association, said HB 421 is a housekeeping bill, and that the Commission on Courts of Limited Jurisdiction asked Greg Petesch, Director of Legal Services, Legislative Council, to review and update statutes concerning training, qualification and certification of judges (Exhibit #5).

Ms. Bradley stated that new language on page 2 requires that an appointing authority for a new judge must notify the Commission of that appointment immediately. She said that any newly appointed judge cannot assume his or her office unless a certificate of completion of course of education and training has been filed with

the Commission. Ms. Bradley told the Committee that HB 421 is a simple bill, conforming the statutes to current practice, and asked them for a favorable ruling.

Opponents' Testimony:

There were no opponents' of HB 421.

Questions from Committee Members:

Senator Towe asked who appoints the judges of limited jurisdiction, and if the bill addresses appointing temporary judges to fill in while someone is gone on vacation, or if it addresses filling a vacancy. Representative Hoffman replied it addresses vacancies, and said county commissioners, appoint justices of the peace.

Senator Halligan asked if attorneys would have to complete the certification process. Representative Hoffman replied that he thought they would.

Closing by Sponsor:

Representative Hoffman, made no closing comments, except to ask that the Committee pass the bill out.

EXECUTIVE ACTION ON HOUSE BILL 421

Motion:

Senator Halligan made a motion that HB 421 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

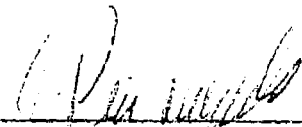
The motion made by Senator Halligan carried unanimously. Senator Doherty was asked to carry HB 421.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 19, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 421 (third reading copy -- blue), respectfully report that House Bill No. 421 be concurred in.

Signed: 

Richard Pinsoneault, Chairman

jc 3/19/91
And. Coord.

SP 3/19 2:00
Sec. of Senate

591252SC.3j1

Montana Magistrates Association

19 Mar 91
HB 421

March 19, 1991, before the Senate Judiciary Committee

HB 421, an act to clarify training requirements for judges.

Testimony by Pat Bradley, Lobbyist for MMA

Mr. Chairman and Comimmittee Members:

This is a housekeeping bill. The Commission on Courts of Limited Jurisdiction asked Greg Petesch to review and update statutes concerning training, qualification and certification of judges and this bill is the result of that review.

The thrust of the new language on page 2 is that an appointing authority for a new judge must notify the commission of that appointment immediately. Secondly, any newly appointed judge cannot assume his or her office unless a certificate of completion of course of education and training has been filed with the commission.

On page 3, the bill addresses training and certification of municipal judges which was not in the statute.

On page 5 language is added to qualifications of those persons who act in a temporary absence for a judge.

On page 6, the bill provides that the election board shall certify election results to the supreme court.

This is a simple bill which conforms the statutes to current practice. We ask you favorable ruling. Thank you.

Pat Bradley